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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,142

03/09/2005

Jose V. Saavedra

DOW-31668-A-US

9532

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7590

06/19/2009

WHYTE HIRSCHBOECK DUDEK S.C./DOW

Intellectual Property Department

555 East Wells Street, Suite 1900

Milwaukee, WI 53202

EXAMINER

KRUER, KEVIN R

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,142	<b>Applicant(s)</b> SAAVEDRA ET AL.	
	<b>Examiner</b> KEVIN R. KRUER	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-16,20-22 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4, 6-16,20-22 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/9/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/15/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 15, 2009 has been entered.

### ***Specification***

2. The abstract filed January 16, 2009 is sufficient for overcoming the previous objection.
3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. ***Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.*** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.

- (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

### ***Claim Rejections - 35 USC § 102***

**4.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**5.** Claims 1, 3, 4, 6-16, 20-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Tau et al (US 2001/0046606).

Tau discloses a coextruded, blown film comprising one core layer of a propylene random copolymer, sandwiched between two skin layers made of a blend of linear low density polyethylene and low density polyethylene, whereas the film exhibits a haze of less than about 15% and a 2% secant modulus greater than about 50000 psi. The use of such film as liners or bags, as well as a method of making are as well therein disclosed (claims 1,18-21; page 1, paragraphs 9-11; page 2, paragraph 18; page 2, paragraphs 24-25; page 6, paragraph 53; page 6, paragraph 61-page 7, paragraph 68; page 8, paragraphs 72-77; examples A,B,C; tables 1-3). The film may comprise tie

layers (0067) which are herein understood to read on layers 4 and 5. the LLDPE meets the MI of claim 8 (0055).

Tau does not explicitly mention the cross directional shrinkage values or force for the film but said film is understood to inherently meet said limitation since it is compositionally identical to the claimed film. Thus, unless the Applicant can provide convincing arguments (in the form of comparative examples) showing that the product does not exhibit the desired cross directional shrinkage interval, said properties are understood to be inherent because the film of Tau is compositionally and structurally identical to the claimed film.

6. The rejection of claims 1, 8-16, 20-22, and 25-29 under 35 U.S.C. 102(b) as being anticipated by EP 0388177A (Nelson) has been overcome by amendment. Nelson does not teach the claimed inner layer composition.

7. The rejection of claims 1, 3-16, 20-22, and 25-29 under 35 U.S.C. 102(b) as being anticipated by WO-0110643 (Banaszak) has been overcome by amendment. Nelson does not teach the claimed inner layer composition.

8. Claims 1, 3, 4, 6-16, 20-22, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Sun et al (US 6,835,462).

Sun discloses a coextruded, biaxially oriented blown (col 10, lines 5+) film comprising one core layer made from HPDE, LDPE or MDPE (col 3, lines 50+), sandwiched between two polymeric skin layer, possibly made polystyrene, styrene-butadiene or propylene copolymers (col 9, lines 25+). The film exhibits a haze of less than 2% (col 9, lines 52+), and a cross directional shrink of at least about 10% (table

VI). The film may comprise five layers (col 11, lines 15+ -adhesive layers present between the core and skin layers). Furthermore, the PE meets the MI of claim 8 (table 1).

With respect to the 2% secant modulus, see tables V and VI and column 11, lines 62+. Thus, unless the Applicant can provide convincing arguments (in the form of comparative examples) showing that the product does not exhibit the 2% secant modulus range, said property is considered inherent to the prior art since the film is compositionally and structurally identical to the claimed film. With respect to the claimed cross directional shrink force, said property is understood to be inherent to the film of Sun since it is heat set (col 8, line 14) and compositionally identical to the claimed film.

### ***Response to Arguments***

Applicant's arguments filed April 15, 2009 have been fully considered but they are not persuasive with respect to Tau. Applicant argues the claimed inner layer does not comprise a coupled propylene random copolymer. However, there is no evidence of record that suggests the claims are limited to unmodified polymers. Therefore, the rejection is maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUEER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin R. Kruer/  
Patent Examiner-Art Unit 1794